

## **APPENDIX A**

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## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
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## Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 12-27-04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required: Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_
- ☒ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other A replacement or new Abstract must be submitted with out any markings. (no markings) Clean Abstract
- ☐ 3. Amendments to the drawings: \_\_\_\_\_
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New) and (Not entered).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☐ E. Other: \_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officefiver.pdf>.

If the non-compliant amendment is a PRELIMINARY AMENDMENT, applicant is given ONE MONTH from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.

If the non-compliant amendment is a reply to a NON-FINAL OFFICE ACTION (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a FINAL REJECTION, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Legal Instruments Examiner (LIE)

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- A claim being canceled must be listed in the claim listing with the status identifier "canceled"; the text of the claim must not be presented. Providing an instruction to cancel is optional.
- (5) Any claims added by amendment must be presented in the claim listing with the status identifier "(new)"; the text of the claim must not be underlined.
- (6) All of the claims in the claim listing must be presented in ascending numerical order. Consecutive canceled, or not entered, claims may be aggregated into one statement (e.g., Claims 1 - 5 (canceled)).

**Example of listing of claims (use of the word "claim" before the claim number is optional):**

- Claims 1-5 (canceled)
- Claim 6 (previously presented): A bucket with a handle.
- Claim 7 (withdrawn): A handle comprising an elongated wire.
- Claim 8 (withdrawn): The handle of claim 7 further comprising a plastic grip.
- Claim 9 (currently amended): A bucket with a green blue handle.
- Claim 10 (original): The bucket of claim 9 wherein the handle is made of wood.
- Claim 11 (canceled)
- Claim 12 (not entered)
- Claim 13 (new): A bucket with plastic sides and bottom.

**B) Amendments to the specification:**

Amendments to the specification, including the abstract, must be made by presenting a replacement paragraph or section or abstract marked up to show changes made relative to the immediate prior version. An accompanying clean version is not required and should not be presented. Newly added paragraphs or sections, including a new abstract (instead of a replacement abstract), must not be underlined. A replacement or new abstract must be submitted on a separate sheet, 37 CFR 1.72. If a substitute specification is being submitted to incorporate extensive amendments, both a clean version (which will be entered) and a marked up version must be submitted as per 37 CFR 1.125.

The changes in any replacement paragraph or section, or substitute specification must be shown by underlining (for added matter) or strikethrough (for deleted matter) with 2 exceptions: (1) for deletion of five characters or fewer, double brackets may be used (e.g., [1(er)001]); and (2) if strikethrough cannot be easily perceived (e.g., deletion of the number "4" or certain punctuation marks), double brackets must be used (e.g., [1(4)]). As an alternative to using double brackets, however, extra portions of text may be included before and after text being deleted, all in strikethrough, followed by including and underlining the extra text with the desired change (e.g., number 4 as number 14 as)

**C) Amendments to drawing figures:**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment, and may be accompanied by a marked-up copy of one or more of the figures being amended, with annotations. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. Any marked-up (annotated) copy showing changes must be labeled "Annotated Marked-up Drawings" and accompany the replacement sheet in the amendment (e.g., as an appendix). The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Questions regarding the submission of amendments pursuant to the revised practice set forth in this flyer should be directed to: Elizabeth Dougherty or Gena Jones, Legal Advisors, or Joe Narcavage, Senior Special Projects Examiner, Office of Patent Legal Administration, by e-mail to [patentpractice@uspto.gov](mailto:patentpractice@uspto.gov) or by phone at (703) 305-1616.

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### **DETAILED ACTION**

#### ***Election/Restrictions***

1. Claims 1-5, 8-10 and 15-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected method, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/23/04.

Applicant's election with traverse of claims 6-7 and 11-14 in the reply filed on 9/23/04 is acknowledged. The traversal is on the ground(s) that there would be a great economy of cost and effort on the part of the Office if the subject matter of both groups were examined and that the subject matter of the groups define one invention and do not possess sufficient differences to warrant issuance of separate patents. This is not found persuasive because the special technical features between the two inventions are different and thus the searches for both inventions largely don't overlap.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Specification***

2. The abstract of the disclosure is objected to because **a)** the abstract is over 150 words; and **b)** the abstract currently summarizes both the method and apparatus, but since only apparatus claims are examined the abstract should only summarize the apparatus. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: **a)** the title describes both the method and the apparatus, however since only apparatus claims are elected the title should be rewritten to include only the apparatus; **b)** at page 3, line 1

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